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Summary record of the 898th meeting

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to be able to perform his duties. Undue emphasis on privileges and immunities would be apt to alarm States.

41. The Commission had already recognized the difficulty that would arise in distinguishing between special missions according to whether they were technical or political in character; nevertheless it might consider establishing some kind of hierarchy of special missions, with a corresponding scale of status.

42. The United States proposal diminished the value of the Commission's work, for it was precisely with reference to "small" special missions that rules were most needed; missions at a high enough level to be headed by a minister and received by a minister were usually the subject of special agreements between the sending and the receiving State.

43. Mr. AGO said that a decision to leave the definitions until later would probably be satisfactory to all, provided of course that the Commission knew exactly what it wished to do. He personally believed that the Commission's task was to draw up minimum rules for application to all special missions regardless of their level, duties and duration. Such rules would have to be both strict and moderate, for care must be taken not to alarm States. If the Commission found later on that some of the rules did not suit all special missions, it would register the fact by distinguishing several categories of special mission, and then see whether that differentiation should be reflected in the definitions.

44. Mr. BARTOŠ, Special Rapporteur, said that articles 1 and 2 were concerned with the institution of special missions as such, and consequently dealt with questions of substance which should not be confused with questions of definition. It was also necessary, however, to ensure that no definition conflicted with the system of the draft articles. That was why he had drawn the Commission's attention to the United States comment.

45. After thorough discussion, and with the approval of the General Assembly, the Commission had decided on a system in which it had not distinguished several different categories of special missions. Perhaps, however, it might revert to the idea of a draft text concerning high-level special missions which might be at least the ministerial level. The Commission might therefore leave the United States comment aside for the time being and re-examine it when it came to take up the question of high-level special missions.

46. The comments made on article 1 fell into four groups, relating to the characteristics of the special mission, the question of consent, the question whether the dispatch of a special mission was subject to the existence of diplomatic relations between the two States, and lastly, the question whether the dispatch of a special mission entailed recognition of each other by the two States. The Commission might continue its discussion by examining the first group of comments.

47. The CHAIRMAN said that the general opinion in the Commission appeared to be that certain important matters of substance raised by the United States Government comments should not be set aside altogether but that the Commission should proceed with the discussion

of the draft articles one by one, bearing in mind that at some later stage it would have to go into those matters. The Commission would then have to consider the question of the definition and the problem of the different categories of special mission; it would also have to examine the whole question of consent. The debate had produced a useful clarifying discussion but the Commission had not reached any definite conclusion on the matters raised by the United States Government's proposal.

48. The Commission would therefore proceed at its next meeting in the manner suggested by the Special Rapporteur.

The meeting rose at 1 p.m.

898th MEETING

Thursday, 11 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Also present: M. Golsong, Observer for the European Committee on Legal Co-operation.

Co-operation with Other Bodies

[Item 5 of the agenda]

1. The CHAIRMAN invited the observer for the European Committee on Legal Co-operation to address the Commission.

2. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that during the past year the Committee had completed its work on drafting five European conventions: on the place of payment of money liabilities, the adoption of children, information on foreign law, the recognition and enforcement of arbitral awards, and consular functions. Each included final clauses which might be of interest to the Commission, but he would speak only of one.

3. The purpose of the European Convention on Consular Functions, to be opened for signature by member States in December 1967, was to make uniform rules solely for consular functions, since the rules for consular privileges, immunities and relations had already been made by the 1963 Vienna Convention, to which it expressly referred and which it supplemented. It governed matters relating to estates, shipping and, in an optional protocol, aircraft. A further optional protocol provided for the application of the provisions of the Convention to refugees, and specified in its article 2, paragraph 2, that consular protection of refugees should wherever possible be accorded in consultation with the Office of the United

Nations High Commissioner for Refugees or any other agency of the United Nations which might succeed it.

4. On one point the European Convention went further than the Vienna Convention: the powers of a consul where a national of the sending State was deprived of his freedom. Under article 36 of the Vienna Convention certain consular functions could be exercised in such cases only if the national so requested or if he did not expressly oppose such action; whereas article 6 of the European Convention entitled a consular officer to be informed and to interview a detained national without his prior consent.

5. The final clauses of the European Convention dealt with the settlement of disputes, reservations, accession of third States, and so on. Two important provisions concerned disputes. The first laid down that any dispute which the parties could not settle themselves should be submitted to the International Court of Justice at the request of one of them. Under the second provision, special procedures for extra-judicial settlement, that would be open to the parties before they moved the Court, were to be devised by the Committee of Ministers of the Council of Europe.

6. Where reservations were concerned the Convention, like others already concluded in the Council of Europe, provided a system of negotiated reservations. Under that system, reservations could be made solely in respect of the provisions listed in an annex.

7. With regard to third States, the Convention on Consular Functions provided that such States might accede only with the unanimous approval of the Committee of Ministers of the Council of Europe. That system differed from those established in most of the other Council of Europe conventions, which provided for the accession of third States on much easier terms. Several States, both European and non-European, had thus acceded to various instruments already in force within the Council of Europe, such as those concerning patents, cultural affairs, extradition and mutual assistance in criminal matters.

8. The European Committee on Legal Co-operation was continuing work on State immunity from jurisdiction and the privileges and immunities of international organizations. It hoped to be able to complete its work in the spring of 1968, so that the International Law Commission would be able to take it into account during its own discussion of the relations between States and inter-governmental organizations.

9. The European Committee was particularly interested in the law of treaties and especially in the Commission's draft, as well as in the work of the United Nations Commission on International Trade Law set up under General Assembly resolution 2205 (XXI).

10. The Committee had greatly appreciated the attendance and participation of Mr. Bartoš and Mr. Yasseen as observers for the International Law Commission. The Committee's work, though concerned with matters of interest to member States, was designed to contribute to the construction of a more orderly international law, which was also the aim of the United Nations, and of the International Law Commission in particular.

11. Mr. YASSEEN said that he was waiting to receive the records of the Committee's last meeting before he wrote a report on his mission.¹ He desired, however, to stress forthwith how greatly he had admired the Committee's work; he had particularly appreciated the quality and insight of the report prepared by a working party of the Committee on the privileges and immunities of international organizations.

12. The Committee was taking a lively interest in the success of the movement towards codifying the law of treaties and had decided to establish a special sub-committee to study the Commission's draft. On that occasion he had thought it desirable to point out that the draft was a compromise and that, though it did not contain everything which individual States might have wished, it did at least state general rules which could be accepted by every country in the world.

13. Mr. BARTOŠ said that he had represented the Commission at the November session of the European Committee on Legal Co-operation, and had gathered that the Committee had great respect for the Commission and was anxious to work in harmony with it. He had been more than an observer or a visitor; he had had an opportunity to express his views, especially on the important matter of the ratification of international conventions. He had cited the example of the World Health Organization and the International Labour Organisation, which made provision for sanctions in order to induce States to act in an orderly manner by ratifying concluded conventions, since unless they did so all the work done was stultified.

14. Like the Commission, and although it was not a really satisfactory method, the Committee was sometimes compelled to omit controversial matters, even vital matters of substance, from the texts it drafted.

15. The Committee's aim was to introduce at the European regional level, sometimes with additions, the rules embodied in the universal conventions of the United Nations, even if they had not yet entered into force. The Committee was thus doing highly commendable work, especially since it had no separatist aim but was trying to develop rules of general international law by fitting them to the needs of a region.

16. Many members of the Committee had expressed their gratification that Mr. Raton had participated as a United Nations observer in the work of the expert sub-committee of the Council of Europe on the privileges and immunities of international organizations. The Committee was eager for even closer collaboration with the United Nations in general and with the Commission in particular. He believed that the Commission should continue its fruitful collaboration with the regional legal committees, in conformity with its terms of reference and the spirit of the Charter.

17. Mr. AGO said that one matter was of vital importance: in view of the present need for a codification of international law along the lines of a thoroughgoing redefinition, it was much to be regretted that certain

¹ Subsequently issued as document A/CN.4/198.

codification conventions, on which the Commission had expended a great deal of effort and which had been adopted by an international conference could not come into force for many States because they delayed ratifying them. The General Assembly should look into that problem at some time and solve it. What was possible within the International Labour Organisation, for example, which had set up an effective system to speed up the ratification of conventions, should also be possible for the major conventions codifying international law.

18. In the meantime, the best way to speed up ratification and to give concluded conventions greater chance of success was certainly closer collaboration between the Commission and all bodies able to influence governments and public opinion, such as the European Committee on Legal Co-operation, the Asian-African Legal Consultative Committee, and others.

19. Mr. EUSTATHIADES said that, as a member of the European Committee, he could testify that it esteemed the Commission most highly. He had had an opportunity to draw the Committee's attention to the problem of indefinitely postponed ratifications. The Council of Europe admittedly had practical and direct means of exerting its influence at regional level. It mainly dealt, however, with conventions for co-operation on various special matters rather than with actual codification conventions. The ratification problems it encountered were often due to the way in which conventions were drafted and to some discrepancy between the position of governments and the texts ultimately adopted.

20. Universal codification could, however, also be advanced by regional means. The precedent of the European Convention on Consular Functions was encouraging, though it should not be allowed to give rise to any exaggerated hopes. Collaboration between the Commission and the Committee might help to solve the problem of harmonizing regional and universal obligations.

21. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said he wished to thank members of the Commission who had referred to the usefulness of co-operation between the Commission and the European Committee, which was also the view of the European Committee. In reply to Mr. Ago, he confirmed that the European Committee regularly reviewed the number of ratifications to universal conventions, in order to encourage the member States of the Council of Europe to ratify them. The question would again be considered at the meeting in December.

22. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for the interesting information which he had furnished and said it was most encouraging for the future codification of international law. The Commission had also listened with interest to the statements by Mr. Yasseen and Mr. Bartoš on their missions to the Council of Europe and associated itself with the gratitude expressed by them for the hospitality extended to them at Strasbourg.

23. Those two statements, and the further remarks by other members of the Commission, provided evidence

of the reality and the usefulness of contacts with regional organizations. Nothing could be more disastrous to the movement for the codification of international law than the appearance of any wide divergence between regional movements for codification and the movement in the International Law Commission and the central organs of the United Nations. Maintaining close contacts with regional bodies was therefore of the very greatest significance. Such contacts should make it possible to prevent wide gaps from developing between legal ideas in different parts of the world and complicating the work of the Commission even further. They could also play an important part in promoting the acceptance of the measure of agreement reached in the Commission for the codification of various topics.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(resumed from the previous meeting)

[Item 1 of the agenda]

24. ARTICLE 1 (The sending of special missions) [2 and 7, para. 1].

Article 1 [2 and 7, para. 1]

The sending of special missions

1. For the performance of specific tasks, States may send temporary special missions with the consent of the State to which they are to be sent.

2. The existence of diplomatic or consular relations between States is not necessary for the sending or reception of special missions.

25. The CHAIRMAN invited the Commission to consider article 1, the Special Rapporteur's proposals for which were contained in paragraph 28 of the section devoted to that article in his fourth report (A/CN.4/194/Add.1).

26. Mr. BARTOŠ, Special Rapporteur, said that, to begin with, he would be glad to have the Commission's opinion on the first group of comments relating to article 1, namely, those relating to the essential characteristics of a special mission; there were two such comments.

27. The Belgian Government suggested (A/CN.4/188) that the words "for the performance of specific tasks" and "temporary" in paragraph 1 should be deleted, since it considered that they should be included in the definition to be given in the introductory article. He personally would prefer to retain the present wording. In the Commission's view, a special mission was temporary, but its task was not necessarily so; the task was specified but was not always completed by the special mission.

28. The Chilean Government proposed (A/CN.4/193/Add.1) that a special mission should be defined solely in terms of its temporary nature; the specific nature of its tasks should not be stated. That proposal was incompatible with the Commission's system; its result would

be that a provisional general diplomatic mission would be regarded as a special mission. Under the Commission's system, however, a mission of that kind would be treated on the same footing as a permanent diplomatic mission. A special mission's task might be fairly broad, but it must be specific and must be specified in the credentials given to the special mission and accepted by the receiving State.

29. Mr. CASTRÉN said that he was in favour of the text adopted at the seventeenth session for the reasons which the Special Rapporteur had just stated.

30. Mr. REUTER said that he, too, supported the Special Rapporteur's comments. If, however, some members still harboured any doubts, the question could be deferred.

31. Mr. TSURUOKA said that he, too, agreed with the Special Rapporteur on the substance. It might help, however, if the word "temporary" were deleted from article 1 provisionally, on the clear understanding that the definition of a special mission should state that it was temporary.

32. Mr. KEARNEY asked whether he was to understand that the Commission's practice was to make the definitions subsidiary to the substantive articles. That seemed to be at variance with the practice in legislative drafting with which he was familiar. Also, if the definitions were not discussed till the end of the draft, the result might be to reduce them to a minimum.

33. Mr. BARTOŠ, Special Rapporteur, said that the practice of the Commission and of the international conferences he had attended was not to draft definitions until the essential concepts had been incorporated in the text. Definitions must not prejudge the text; they were derived from it. The converse method need not be rejected out of hand, but it was not the Commission's normal practice.

34. The CHAIRMAN said that his own experience with the topic of the law of treaties was that the Commission had no hard and fast rule as to the timing of its decisions on definitions. The general practice, however, had been to leave the more difficult discussions on definitions until very near the end of the Commission's work, though whenever the Commission had found that there was a close link between a particular definition and one of the substantive articles, it had considered that definition at the same time as the article in question.

35. He understood the remarks of Mr. Reuter and Mr. Tsuruoka to mean that they agreed to the retention in article 1 of the two elements under discussion, namely, the temporary character of the special mission and the specific character of its tasks, subject to the reservation that if those elements were later included in the definition of special missions, the drafting of article 1 might have to be revised. That view was also shared by the Special Rapporteur himself, who thought it preferable not to try to settle the definition of special missions at the present stage but to agree on the substance of article 1; of course, if certain points came later to be covered in the definition, it would be reasonable to adjust the language of article 1.

36. Mr. KEARNEY said he had asked his question because he had noticed that, at the previous meeting, Mr. Castañeda had suggested that certain factors relating to such matters as the level and duration of special missions should be specifically included in the definition.

37. Mr. ALBÓNICO said that he shared the Special Rapporteur's view that it was necessary to retain in article 1 the reference to the performance of specific tasks as one of the necessary elements of the special mission. The suggestion by the Chilean Government that a special mission should be defined solely in terms of the temporary nature of its functions was not well-founded; as pointed out by the Special Rapporteur, there were missions of a temporary or provisional character which did not constitute special missions, precisely because they were entrusted not with the performance of specific tasks but with general duties.

38. Similarly, and for the reasons given by the Special Rapporteur, he could not support the Belgian Government's suggestion to delete the words "For the performance of specific tasks" and "temporary". Both those elements should be retained in article 1.

39. The Commission should proceed with the utmost caution when dealing with the topic of special missions. The position was different from that which had obtained in the case of diplomatic and consular relations, in respect of which a considerable body of international law had been built up in the course of time. In the case of special missions, there were few well-established principles and the Commission was now called upon to formulate most of the rules in the matter. Personally, he shared the view of Mr. Reuter that, as far as possible, governments should be left free to regulate special missions by agreement.

40. The rules to be adopted by the Commission should therefore be flexible, so as not to constitute an obstacle to the activities of States and to the use of special missions.

41. Mr. REUTER said that the Commission should try to consider as soon as possible the régime *stricto sensu* of special missions. For the time being it was accepting as a working hypothesis the need to define a general régime in ordinary law. Some points had already been settled, others were more controversial. As the Special Rapporteur had observed, the Commission agreed that missions entrusted with a general task enjoyed diplomatic status and so fell outside the scope of the draft articles.

42. After hearing Mr. Kearney the Commission had considered, though with some hesitation, that it should make provision for a higher class of special mission. The idea had been put forward that States might withdraw some missions from the scope of the general régime, and he himself agreed with Mr. Ago that, for the moment, the Commission should not pay too much attention to that question when considering each article. It did not yet know what rules would be embodied in the general régime, and should wait until it had established them before deciding to what extent and in what circumstances States might obtain exemption from them.

43. Mr. EUSTATHIADES said he agreed with Mr. Reuter. The scope of certain technical definitions was limited, but the definition of a special mission actually

brought up the whole question of the scope of the convention's application. It would therefore be premature at the present stage of the Commission's work to go further into the definition of a special mission. If the problem were examined at once, some States would be inclined, for lack of knowledge of the exact scope of the convention, to reduce the privileges and immunities accorded to special missions.

44. Mr. BARTOŠ, Special Rapporteur, said that in his opinion the Commission ought not to change the provisionally adopted text of article 1, and the words "specific tasks" and "temporary special missions" should be retained, on the understanding that the Drafting Committee would be asked to frame the final text.

45. The CHAIRMAN said that the Commission appeared to agree with the Special Rapporteur that the references to the temporary character and the specific tasks of the special mission should be retained in article 1, without prejudice to the ultimate definition. That meant that the Commission rejected the suggestions for their deletion made by certain governments, but the question whether the two elements thus retained would ultimately appear in article 1 or in the definition of special missions would be a matter of drafting.

46. If there were no objection, he would consider that the Commission agreed to conclude its discussion of the point on that basis.

It was so agreed.

47. Mr. BARTOŠ, Special Rapporteur, suggested that the Commission examine the second group of objections by governments, relating to the notion of consent.

48. The Commission had established that the sending State could not send a special mission of its own accord without the consent of the receiving State, and had admitted that in practice such consent was generally given informally without an agreement providing that the special mission should be entrusted with some specific task; it had therefore not wished to decide on what terms such consent should be given.

49. The Belgian Government had raised an objection (A/CN.4/188) to the very use of the term "consent", which in its opinion "connotes tolerance rather than approval, whereas what happens in practice is that a proposal is made which is followed by an invitation". He had observed in his report that the term was used in its true sense, that of a consent which was the real expression of the will of the State, and did not necessarily imply an invitation. The Commission might perhaps add that explanation to its commentary to article 1.

50. The United Kingdom Government had proposed in its written comments (A/CN.4/188/Add.1) that the word "express" should be inserted before the word "consent"; but the Commission had wished to take into consideration the fact that consent, though a genuine expression of the will of the receiving State, was often given informally or even tacitly. The United Kingdom had also expressed the opinion, in its comments on the text of the Commission's commentary to article 1, that the status of certain permanent specialized missions should be regulated by international agreement.

51. Although he believed that consent need not necessarily be given formally, he admitted that under special conditions, States might conclude a treaty or simply exchange notes to define those special conditions by agreement. Since there could be no special mission without the consent, even if tacit, of the receiving State, he thought that the Commission should not qualify in any way the word "consent" in article 1, paragraph 1 as provisionally adopted. It might, however, explain in its commentary that consent was necessary in every case, but might be informal.

52. In the case of countries which required entry visas, the visa applications contained a statement of the reasons for which a person or delegation was requesting the visa, and the problem was more easily solved. Since Yugoslavia, like many other countries, had abolished that formality, the solution must be found within the general system applicable to special missions.

53. Mr. REUTER said that he approved the recommendations submitted by the Special Rapporteur and did not think that the Commission should change the text of the draft articles. The problem was whether the rules should be mandatory and to what extent; the Special Rapporteur was right in wishing to leave States free to stipulate that only special missions which had received their *agrément* should enjoy the benefits of the system set up under the convention.

54. Mr. TAMMES said that the amendments proposed by the Netherlands Government (A/CN.4/193) had been interpreted in some quarters as an attempt to restrict the scope of special missions; the purpose of those amendments, however, was merely to promote the introduction of legal rules which would facilitate international co-operation.

55. There would be less need for a restrictive definition of special missions if article 1, paragraph 1, were redrafted to make it clear that the "consent of the receiving State" implied a clear understanding between the sending and receiving States that the mission in question was a special mission in the sense of the proposed convention. In that case, "consent" would mean that the parties freely agreed that a set of rules aimed at facilitating the task of special missions would be applied, either in whole or in part, to a particular special mission.

56. The Special Rapporteur had expressed the opinion (A/CN.4/194/Add.1) that "the nature of special missions does not depend on the fact that Governments have agreed to confer the status of special mission on a group of representatives but that special missions are specific institutions in international law". It seemed to him, however, that some provision in article 1 for agreement concerning the task and status of the special mission would help to make the draft articles more easily acceptable to many States.

57. Mr. BARTOŠ, Special Rapporteur, said that the Commission should examine the comments by the Netherlands Government reproduced in paragraph 124 of his fourth report on special missions (A/CN.4/194) when it came to decide whether the rules in the draft articles were rules of *jus cogens* or of *jus dispositivum*.

58. Mr. USTOR said that he would have difficulty in accepting the United Kingdom proposal for the insertion of the word "express" before the word "consent" in article 1, paragraph 1. It often happened that special missions were sent out with the tacit approval of the receiving State; the insertion of the word "express", however, would mean that States parties to the convention would agree that special missions could not be sent out only with the tacit or informal consent of the receiving State. That would represent a considerable innovation in international practice and he questioned whether there was any real need for it.
59. Article 1, as at present drafted was an adequate codification of the existing situation in international law. It was true that it left unanswered the question of which special missions were entitled to privileges and immunities, but that question could be dealt with in the later articles, where it could, if necessary, be coupled with the requirement of "express consent". Meanwhile, it would be unwise to exclude from the definition of special mission the very numerous missions which were being sent out from one country to another every day, and which were not based on any formal specific agreement between the sending and the receiving States.
60. Mr. TSURUOKA said that qualification of the word "consent" by the word "express" was superfluous because the consent must obviously be real. He wondered whether provision should be made in the general system for special cases, depending on the authorities giving their consent. The Commission should decide that the authorities from whom the consent emanated were those specified in the draft convention on the law of treaties, and no exception should be provided.
61. Mr. CASTAÑEDA said that he agreed with the Special Rapporteur that it was undesirable to insert the word "express" before the word "consent" in article 1, paragraph 1. The real problem was to determine whether the consent covered only the actual sending of the special mission, or whether it also brought into force the whole régime applicable to special missions as such. He was inclined to agree with Mr. Tammes, despite the misgivings expressed by the Special Rapporteur, that the consent should also cover the status of the special mission and he would not object to the inclusion of a provision to that effect in article 1. Such a provision would also help to remove the doubts about that article which had been expressed by the United States.
62. Mr. BARTOŠ, Special Rapporteur, said that he would prefer not to discuss the status of special missions, which affected the validity of all the rules, until consideration of the problem of consent had been concluded.
63. Mr. YASSEEN said that the Commission should not modify the essence of the system, as the appointment of a special mission presupposed that there would be someone for it to talk to and it was therefore inconceivable that it could be regarded as a unilateral body. He agreed with Mr. Tsuruoka that it was enough for the consent to be real, although it could be tacit.
64. Mr. KEARNEY said he agreed with Mr. Castañeda and Mr. Tammes that the Netherlands suggestion might be incorporated in article 1 or article 2. In his opinion, it was not logical to assert that a proposal of that nature was a complete innovation or that it was not in accordance with the underlying idea of the convention. After all, the whole topic of special missions represented an innovation in international law, and since, as the Special Rapporteur had pointed out in his report, there was a lack of special rules on the subject, it was only proper that the Commission should try to create such rules.
65. Mr. CASTRÉN said that, for the reasons given by the Special Rapporteur, he was in favour of keeping the text of the article as already adopted. Like Mr. Tsuruoka and Mr. Yasseen, he believed that the Commission should require consent to be real but not necessarily express.
66. Mr. ALBÓNICO said he agreed with Mr. Castrén that the present text of article 1 should be retained. As Mr. Tsuruoka and Mr. Yasseen had already observed, the only question was whether the consent had actually been given. It would be officious for the Commission to attempt to lay down rules as to how it should be given; its ideas on that subject would appear in the record.
67. The CHAIRMAN, speaking as a member of the Commission, said he agreed with those who considered it unnecessary to insert the word "express" before "consent" in article 1, paragraph 1. That article was designed to make the same point as article 2 of the Vienna Convention on Diplomatic Relations, which stated: "The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent".² There, the only qualification of consent was that it must be "mutual". The question of express and tacit consent had, indeed, arisen in connexion with the law of treaties, but there had been a general tendency in the Commission to eliminate the adjectives and to let the word "consent" stand by itself.
68. He could not agree with the objection of the Belgian Government that the word "consent" connoted tolerance rather than approval.
69. The problem of consent as implying a recognition of status, which had been referred to by Mr. Tammes and Mr. Castañeda, was an important one, but the Special Rapporteur obviously preferred to deal with that problem in a later article.
70. Mr. TSURUOKA said that the consent must be valid in international law and must be given by authorities empowered to give it. He was not asking for an explanation to be added to the draft article, but he believed that the Commission should indicate in the commentary which the competent authorities should be.
71. Mr. BARTOŠ, Special Rapporteur, suggested that the Commission should explain in the commentary that the consent must be real and be given by competent authorities, but should not define those competent authorities, as they might be different in the constitutional system of each country.

² United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II, p. 82.

72. The special mission came into being as soon as consent had been requested by the competent authorities of the sending State and given by the competent authorities of the receiving State.

73. The CHAIRMAN said that it appeared to be the general opinion of the Commission that the word "consent" in article 1, paragraph 1, should not be qualified.

74. Mr. BARTOŠ, Special Rapporteur, said that the Netherlands Government had proposed that the receiving State should give its consent and determine the mission's status. That was a serious problem, for, if the Netherlands proposal were accepted, the mission's status would depend on an institution of municipal law, whereas special missions were specific institutions in international law. To leave the receiving State free to determine the status of a special mission would hardly promote the progress of international law and good relations among peoples, and would open the door to disputes, discrimination or improper interference, which was precisely what the Commission wished to avoid.

The meeting rose at 12.55 p.m.

899th MEETING

Friday, 12 May 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(continued)

[Item 1 of the agenda]

ARTICLE 1 (The sending of special missions) [2 and 7, para. 1] (continued)¹

1. The CHAIRMAN said that at the previous meeting² the Special Rapporteur had given his reasons for rejecting the suggestions put forward by the Netherlands Government in its comments on articles 1 and 2 (A/CN.4/194/Add.1). He invited the Commission to consider those suggestions.

2. Mr. CASTRÉN said that while he had no objection in principle to the Netherlands Government's proposal

which, in his view, was unlikely to involve all the disadvantages mentioned by the Special Rapporteur, he could not recommend its adoption, because, first, it was unnecessary since the consent of the receiving State was always required for a mission to be able to function as a special mission, and that State was free to withhold its consent. Secondly, the receiving State might subject its consent to certain conditions relating, for example, to the status of the special mission, taking into account, of course, any non-discrimination clauses and the rules of *ius cogens*.

3. He saw no reason why the Commission should have to include in the text of the article itself provisions relating to the special mission's status, and oblige States to conclude detailed agreements on the subject.

4. However, he would have no objection to the inclusion of a reference to the Netherlands proposal in the commentary to article 1.

5. Mr. REUTER said he thought the Commission should consider the question raised by the Netherlands Government at the final stage of its work, though the problem would certainly be raised in the course of discussion.

6. The purpose of the convention was to lay down minimum rules which would be applicable in all cases where States had made no specific agreement. To such States the convention would be of great value. The problems raised by the sending of special missions were in practice of very rare occurrence, but when they did arise they were undoubtedly serious. Supposing, for example, that a member of a special mission was prosecuted for a crime or offence committed in the territory of the receiving State, the application of the provisions of a convention would make it much easier to solve the political problems involved.

7. Admittedly, a State signatory to the convention should be able to except any mission from the scope of the general system as it saw fit, but the Commission's reason for drafting a convention was undoubtedly to lay down rules of general application.

8. Mr. BEDJAOUI said he agreed with Mr. Reuter. Undoubtedly the Netherlands Government, like many others, wished to guard against the unforeseen dispatch of special missions, but its proposal would be apt to create problems, especially for countries which had just attained independence and which would frequently have occasion to dispatch or receive special missions for purposes of international co-operation. The Commission should therefore lay down a minimum number of rules that would be acceptable to as many States as possible, on the understanding that States would retain the power to conclude treaties or agreements as they saw fit in each individual case.

9. Mr. YASSEEN said that mutual consent was all that was needed for a mission to secure recognition as a special mission; once the mission existed, it would *ipso facto* have the status which the Commission was trying to establish. Such consent could, of course, be made subject to certain conditions or reservations. But the Netherlands proposal went too far, in that it made not only the sending of a special mission, but the grant to

¹ See 898th meeting, para. 24.

² Para. 74.